

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:	)	
	)	Chapter 11
OTOLOGICS, L.L.C.,	)	
	)	Case No. 12-47045-705
Debtor,	)	
	)	Hearing Date: May 27, 2015
	)	Hearing Time: 10:00 a.m.
	)	

**FINAL APPLICATION FOR ALLOWANCE OF FEES AND EXPENSES FILED ON  
BEHALF OF LEWIS BRISBOIS BISGAARD & SMITH, LLP,  
SPECIAL LITIGATION COUNSEL FOR THE DEBTOR**

(Summary of Request)

<b>Name of Applicant</b>	Lewis Brisbois Bisgaard & Smith LLP
<b>Date of Approval of Employment</b>	Approved on October 8, 2014
<b>Identity of Party Represented</b>	Special Litigation Counsel for the Debtor
<b>Time Period Requested</b>	All Work from Date of Retention
<b>Amount of Fees Requested</b>	\$76, 275.00
<b>Amount of Expenses Requested</b>	\$204.39
<b>Previous Fee Orders</b>	None
<b>Interim or Final Application</b>	Final

COMES NOW, Otologics, L.L.C. (the "Debtor"), by and through its undersigned counsel, pursuant to 11 U.S.C. §§ 328, 330 and 331, and files this *Final Application For Allowance Of Fees And Expenses Filed By Lewis Brisbois Bisgaard & Smith, LLP, Counsel For The Debtor* (the "LBBS Application"). In support thereof, LBBS states as follows:

## **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and E.D. Mo. L.R. 8.1-9.01(8)(1).

## **BACKGROUND**

2. On July 23, 2012 (the "Petition Date"), Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is operating its businesses and managing its properties as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. On or about September, 2014, the Debtor filed an *Application for Employment of Lewis Brisbois Bisgaard & Smith, LLP as Counsel for the Debtor* (the "LBBS Employment Application"). On October 8, 2014, the Court approved the retention of LBBS on a final basis to act as counsel for the Debtor in Colorado litigation styled as Otologics, LLC v. Neurelec S.A. et al., Case No. 2011CV395, State of Colorado, District Court for the City and County of Denver (the "Litigation"). A summary of the services rendered during the period covered in this Application is included in **Exhibit "A"** attached hereto and incorporated herein for reference as is fully set forth.

## **LBBS ATTORNEY FEES AND EXPENSES**

4. The LBBS Application covers the period from October 2, 2014 through date of the LBBS Application (the "Compensation Period").

5. LBBS maintains detailed daily records in the ordinary course of its business. These time records are prepared contemporaneously with the rendition of services to the client. These time records describe the person performing the services, the date the services are

rendered, a detailed description of the services, and the length of time spent delivering those services. These time records are kept in increments of one-tenth of an hour.

6. The services provided by LBBS during the Compensation Period have been actual and necessary. Reasonable compensation for such services based on the time, the nature, the extent and value of such services, and the costs of such services, other than in a case under this Title, is \$76, 275.00. The amount of time recorded by each timekeeper is reflected on **Exhibit A**. Copies of the invoices for such services are attached hereto as **Exhibit B**, and incorporated by reference herein.

7. LBBS has incurred expenses in this matter during the Compensation Period for which it seeks reimbursement in the aggregate sum of \$204.39. A summary of the expenses is set forth in **Exhibit A** and referenced in the invoices attached as **Exhibit B**.

#### INFORMATION REQUIRED BY LOCAL RULES

8. L.B.R. 2016-1(B) requires that all professional fee applications analyze the twelve factors (the “Johnson Factors”) for allowance of compensation set forth in *Johnson v. Georgia Highway Express*, 388 F.2d 714 (5th Cir. 1974). *See also P.A. Novelly v. Palans (In re Apex Oil Co.)*, 960 F.2d 728 (8th Cir. 1992); *Chamberlain v. Kuhr (In re Kula)*, 213 B.R. 729, 736-39 (B.A.P. 8th Cir. 1997); *In re Grimes*, 115 B.R. 639, 642-43 (Bankr. D.S. D. 1990).

9. The Johnson Factors are as follows:

- a. *The time and labor involved*: LBBS has described in detail the time spent and has included a complete description of the tasks performed
- b. *The novelty and difficulty of the questions*: Although the underlying Neurelec Litigation is highly complex, there was no premium charged for the tasks performed in this matter.

- c. *The skill requisite to perform the legal service properly:* The LBBS lawyers involved in this case have demonstrated the skills necessary to prosecute this matter.
- d. *The preclusion of other employment by the attorney due to acceptance of the case:* Acceptance of this case did not preclude other employment and, accordingly, no premium was charged.
- e. *The customary fee:* The rates charged by LBBS are heavily discounted rates compared with rates it charges similar clients in similar matters.
- f. *Whether the fee is fixed or contingent:* The fees requested herein are neither fixed nor contingent.
- g. *Time limitations imposed by the client or the circumstances:* This case poses normal time pressures inherent of a case of this type.
- h. *The amount involved and the results obtained:* LBBS submits that the fees requested are appropriate given the value of the litigation. The litigation was recently settled on terms favorable to the Debtor; the settlement was approved by the Court on March 13, 2015.
- i. *The experience, reputation, and ability of the attorneys:* LBBS is a full-service law firm with over 900 attorneys and offices nationwide and is well known and respected in national legal markets. The LBBS attorneys are skilled in this type of litigation, especially in light of the fact that they previously represented the Debtor in the defensive Neurelec litigation which took several years and culminated in a 3 ½ week jury trial and a several day bench trial on the injunction issues.

- j. *The undesirability of the case:* This is not an undesirable case.
- k. *The nature and length of the professional relationship with the client:* The LBBS attorneys have represented Debtor for several years in various matters, including the original defensive Neurelec litigation.
- l. *Awards in similar cases.* On information and belief, the fees requested are below other similar cases in this District and in Colorado.

#### **LOCAL COMPENSATION RULES AND U.S. TRUSTEE GUIDELINES**

10. On January 30, 1996, the Office of the United States Trustee promulgated guidelines for compensation and reimbursement of expenses from a bankruptcy estate (the "U.S. Trustee Guidelines"). *Reprinted* at 28 C.F.R. Part 58, Appendix. The information requested under the U.S. Trustee Guidelines not otherwise disclosed herein is as follows:

<b>Review of Application</b>	This application is being sent to the Debtor and other parties simultaneously with its filing.
<b>Status of Plan</b>	No plan is on file in this case.
<b>Monthly Operating Reports</b>	Debtor last filed an operating report for March, 2015.
<b>Quarterly Fees</b>	Debtor has made all quarterly fee payments due to the Office of the U.S. Trustee.
<b>Unpaid Administrative Expenses</b>	None, other than professional fees and ordinary course of business liabilities.
<b>Cash on Hand</b>	The Debtor has access to sufficient funds to pay the amounts due.

<b>Unencumbered Funds</b>	There are no secured creditors holding liens on the cash on hand.
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WHEREFORE, LBBS respectfully requests that this Court allow it attorneys' fees in the amount of \$76, 275.00, expenses in the amount of \$204.39, authorizing and directing Debtor to pay all allowed fees and expenses that have not been paid to-date under the local rules, and for such other and further relief as is just and equitable.

Dated: May 1, 2015

Respectfully Submitted,

THOMPSON COBURN LLP

By: /s/ David A. Warfield

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**Certificate of Service**

The undersigned certifies that on May 1, 2015, a true and accurate copy of the foregoing *Final Application For Allowance Of Fees And Expenses Filed By Lewis Brisbois Bisgaard & Smith, LLP, Counsel For The Debtor* was served on all parties receiving notice through the Court's CM/ECF system.

/s/ David A. Warfield